

JANET T. MILLS  
ATTORNEY GENERAL



REGIONAL OFFICES:  
84 HARLOW ST., 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301  
PORTLAND, MAINE 04101  
TEL: (207) 822-0260  
FAX: (207) 822-0259

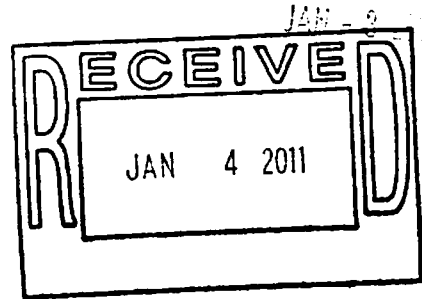
14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

TEL: (207) 626-8800  
TTY: 1-800-577-6690

STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

December 30, 2010

Donna Howe, Clerk  
Oxford County Superior Court  
26 Western Ave.  
P.O. Box 179  
South Paris, Maine 04281



Re: *Mills v. Bethel Water District*

Dear Ms. Howe:

Please find enclosed for filing in the above-referenced matter the Complaint and proposed Consent Order, which is signed by the parties.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Linda Conti'.

Linda Conti  
Chief, Consumer Protection Division

cc: Geoffrey H. Hole, Esq.

STATE OF MAINE  
OXFORD, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. \_\_\_\_\_

JANET T. MILLS, in her capacity )  
as the ATTORNEY GENERAL OF )  
THE STATE OF MAINE, )

Plaintiff )

v. )

BETHEL WATER DISTRICT, a )  
public utility organized under )  
the laws of the State of Maine )

Defendant. )

**COMPLAINT FOR  
DECLARATORY and  
INJUNCTIVE RELIEF**

Plaintiff, the Attorney General of the State of Maine (the Attorney General) files this complaint pursuant to 5 M.R.S. § 194 for declaratory and injunctive relief as an officer of the State of Maine and on behalf of the citizens of the State of Maine. The Attorney General asks this Court to declare that property once owned by William Bingham, 2d. (the Bingham Land), located in Newry, Oxford County, Maine, is subject to a charitable trust for the benefit of the people of Maine, and may not be used in contravention of the trust’s purposes. The Attorney General also asks the Court to find that the current use of the Bingham Land violates the trust’s charitable purposes and restrictions on use. In support thereof, the Attorney General states:

**PARTIES**

1. The Attorney General is authorized to bring this action pursuant to 5 M.R.S. § 194 and the powers vested in her at common law.

2. Defendant, the Bethel Water District (the Water District) is a public utility organized under the laws of the State of Maine, P.& S.L. 1967, c. 48, with an office in Bethel, Maine.

### **JURISDICTION**

3. This Court has jurisdiction over this matter pursuant to 4 M.R.S. § 105.

### **ALLEGATIONS**

4. The Water District is the successor-in-interest to the Bethel Water Company, which acquired the Bingham Land from William Bingham, 2d. by deed dated March 27, 1925 and recorded in the Oxford County Registry of Deeds in Book 366, Page 453. A copy of the deed is attached hereto as exhibit A.

5. Mr. Bingham conveyed the Bingham Land in trust for “the uses, intents and purposes,” and “subject to the restrictions and limitations,” set forth in the deed.

6. The deed states that the Bingham Land “constitutes the water-shed of Chapman Brook” from which water is supplied to the inhabitants of Bethel, and that it is Mr. Bingham’s “desire and purpose to provide and insure a permanent and perpetually protected source of water supply . . . .”

7. The deed further provides that, “the tree and forest growth of all kinds upon said tract shall be forever conserved and perpetuated and that nothing shall ever be done upon or in connection with said tract of land which may interfere with, endanger, injure or pollute the water taken therefrom for such supply, either in quality or quantity, but that said tract be forever held, kept and maintained as such a protected source of water supply and all things done which are needed or required to make and keep the water therefrom forever and at all times pure and suitable in all ways for domestic use, and such supply adequate

and undiminished for such use and for protective purposes, by care of said tract and the conservation of the tree and forest growth thereof. . . .”

8. The deed further provides that the Water District “shall never cut or remove, or permit to be cut and removed, on or from said tract of land, any trees, wood, timber or growth of any kind excepting as hereinafter provided, to-wit: [the Water District] may cut and remove from said tract, if so desired, in a judicious and workmanlike manner, from year to year, wood and timber sufficient to provide money to pay the taxes legally assessed against [the Water District] upon said particular tract, if and to that extent only, that such cutting and removing will not in any way, directly or indirectly, affect the purity or quality of water therefrom, and if and to that extent only that such wood or timber can be cut or removed without detriment to the perpetual conservation of the tree and timber growth thereon and without depleting or diminishing the same in any way which maybe a present or future menace to the permanency and purity of said water supply, and if and to the extent only that such cutting maybe done in full conformity with the purposes and intents of this conveyance as in this instrument set forth.”

9. The deed provides, however, “that such wood and timber so cut for the payment of such taxes need not be cut each year but such taxes may be otherwise provided for during a period of years, if desired, and such cutting be done in one operation to procure money to reimburse [the Water District] for such payments, but no cutting shall be done in advance of the assessment of such taxes but only to provide money to pay such taxes as may be already assessed, due or paid.”

10. The deed provides “that if said tract of land shall ever be abandoned as a source of such water supply or cease to be used as such, then, in such case, the title to said

land shall pass in fee simple to the State of Maine to be by it forever held, maintained and managed as a public game preserve, bird or game sanctuary, public park or State Forest reserve as said State may determine, and under such conditions as said State may prescribe and designate . . . .”

11. In July 2007, the watershed of Chapman Brook was inundated by a rain event, resulting in erosion and a diminishment in water quality such that the Bingham Land could no longer serve as the primary water supply for the Water District without installation of a costly filtration system.

12. Following the July 2007 rain event, the Water District developed an alternative groundwater source of water, and the Chapman Brook of the Bingham Land no longer serves as the primary water supply for the Water District.

13. The Water District has leased a portion of the Bingham Land to Sunday River Skiway Corporation for ski area activities.

14. The Water District intends to harvest timber from the Bingham Land to fund capital improvements to its water system.

**COUNT I**  
**(Declaration of Charitable Trust)**

15. The State repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

16. Mr. Bingham intended to permanently protect the Bingham Land for use as a water supply, and to restrict timber harvesting to only that necessary to pay assessed property taxes.

17. If the Bingham Land no longer served as a water supply, Mr. Bingham restricted use of the land to a public bird or game preserve or sanctuary, or a public park or forest reserve.

18. Mr. Bingham conveyed the Bingham Land for express purposes and with express restrictions, and thus with a charitable intent to protect and preserve the land for the benefit of the people of the State of Maine as provided in 5 M.R.S. § 194(3).

19. The Bingham Land is subject to a charitable trust, for the benefit of the public, in accordance with the purposes and restrictions set forth in the deed and within the meaning of 5 M.R.S. § 194(1)(B).

20. The Water District, as the successor-in-interest to the Bethel Water Company, accepted the Bingham Land and, because the Land is a trust property, the District is charged with enforcing the terms of the trust deed for the benefit of the public.

21. The Attorney General is vested with statutory and common law authority to enforce the terms of charitable trusts in the State of Maine. 5 M.R.S. §§ 194(2) & (4).

**COUNT II**  
**(Violation of Charitable Trust)**

22. The State repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

23. The Bingham Land is no longer being used as a water supply in violation of the purposes and restrictions of the charitable trust.

**COUNT III**  
**(Violation of Charitable Trust)**

24. The State repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

25. The lease of a portion of the Bingham Land to Sunday River Skiway Corporation for ski area activities violates the purposes and restrictions of the charitable trust because it fails to advance the protection and preservation of the Bingham Land, and it is not otherwise authorized by the terms of the charitable trust.

**COUNT IV  
(Violation of Charitable Trust)**

26. The State repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

27. The proposed timber harvesting to fund capital improvements to the water system is not consistent with the charitable trust restrictions, which restrict timber harvesting to that necessary to pay assessed property taxes.

WHEREFORE, the Attorney General respectfully requests that this Court:

A. Declare that the Bingham Land is subject to a charitable trust, for the benefit of the public, in accordance with the purposes and restrictions set forth in the trust deed;

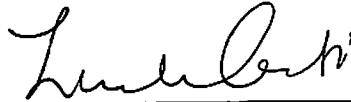
B. Declare the current use of the Bingham Land violates the purposes and restrictions of the Bingham Land charitable trust because the land is not being used as a water supply;

C. Declare that the lease of a portion of the Bingham Land for ski area activities violates the purposes and restrictions of the Bingham Land charitable trust;

D. Declare that the proposed timber harvesting to fund capital improvements to the water system would violate the purposes and restrictions of the Bingham Land charitable trust;

- E. Issue an order enforcing the terms of the Bingham Land charitable trust deed; and
- F. Grant such other and further relief as justice requires, including application of the doctrine of *cy pres* or equitable deviation if appropriate.

Respectfully submitted,  
JANET T. MILLS,  
ATTORNEY GENERAL



Dated: December 30, 2010

---

LINDA CONTI ME BAR NO 3638  
AMY B. MILLS, ME BAR NO 9562  
ASSISTANT ATTORNEYS GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, ME 04333

Attorneys for Plaintiff,  
Attorney General of the  
State of Maine



STATE OF MAINE  
OXFORD, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. \_\_\_\_\_

JANET T. MILLS, in her capacity )  
as the ATTORNEY GENERAL OF )  
THE STATE OF MAINE, )

Plaintiff )

v. )

BETHEL WATER DISTRICT, a )  
public utility organized under )  
the laws of the State of Maine )

Defendant. )

**CONSENT ORDER**

WHEREAS the Bethel Water District (the Water District) is a public utility organized under the laws of the State of Maine;

WHEREAS the Town of Bethel is a municipality located in Oxford County, Maine;

WHEREAS the Water District, as trustee, owns property once owned by William Bingham, 2d. (the Bingham Land), located in Newry, Oxford County, Maine and conveyed by Mr. Bingham by trust deed, subject to express purposes and restrictions, such trust deed recorded in the Oxford County Registry of Deeds at Book 366, Page 453;

WHEREAS Mr. Bingham intended the Bingham Land, the watershed of Chapman Brook, to perpetually serve as a water supply and restricted timber harvesting to that necessary to pay assessed property taxes;

WHEREAS Mr. Bingham intended for the Bingham Land to be maintained and managed as public game preserve, bird or game sanctuary, public park or state forest reserve if the Land ever ceased to serve as a water supply;

WHEREAS a rain event in 2007 rendered use of the Bingham Land as a primary water supply impossible without installation of a costly filtration system, and the Water District is no longer using the Bingham Land as its primary water supply;

WHEREAS the Water District has leased a portion of the Bingham Land to Sunday River Skiway Corporation for ski area activities;

WHEREAS the Bingham Land could serve as an emergency water supply in the event the primary groundwater source is disrupted; and

WHEREAS the Attorney General of the State of Maine (the Attorney General) is vested with statutory and common law authority to enforce the terms of charitable trusts in the State of Maine;

The Court having considered the pleadings and this Consent Order executed by the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Bingham Land is subject to a charitable trust, for the benefit of the people of Maine, in accordance with the purposes and restrictions set forth in the trust deed.
2. Under the doctrine of *cypres* the court has the power to order that a charitable trust be applied to a charitable purpose different from that named by the trustor where the settlor had an intent to benefit charity and the accomplishment of the settlor's charitable purpose is impossible or impractical.
3. Under the doctrine of deviation, the court has the power to change administrative provisions in charitable trusts where the settlor's directions hinder the trustee in accomplishing the trust purpose.

4. It is impractical or impossible for the Bingham Land to continue to serve as a primary water supply.

5. Mr. Bingham had a general charitable intent as his gift of land provided that, should the Bingham Land cease to serve as a water supply, then the land would be given to the State of Maine so that it could be preserved as a public game preserve, bird or game sanctuary, public park or state forest reserve.

6. Under the doctrine of *cy pres*, the Bingham Land can serve, however, as an emergency water supply in the event the primary groundwater source is disrupted, and it can simultaneously serve as a public game preserve, bird or game sanctuary, public park or forest reserve, in accordance with the purposes and restrictions of the trust deed.

7. Under the trust deed the Water District is the trustee so long as the land is used as a water supply and the State takes on that role if it becomes a preserve, sanctuary, park, or forest reserve. The Attorney General and the Water District agree that the Town of Bethel is an appropriate trustee to oversee the use of the Bingham Land as an emergency water supply and as a preserve, sanctuary, park, or forest reserve.

8. Pursuant to the doctrine of *cy pres* the Bingham Land may serve as an emergency water supply.

9. Pursuant to the doctrine of deviation, the Town of Bethel is appointed trustee of the Bingham Land and is responsible for enforcing the purposes and restrictions in the trust deed, thereby protecting the water quality of Chapman Brook and its tributaries such that the Bingham Land may be put into service as an emergency water supply in the event the primary groundwater source is disrupted.

10. The Town of Bethel shall maintain and manage the Bingham Land: consistent with Chapman Brook and its tributaries serving as an emergency water supply; in accordance with the purposes and restrictions of the trust deed as modified by this Consent Order; and in accordance with a Management Plan and Forest Management Plan, which shall be drafted in accordance with the requirements set forth more specifically below.

11. The Town of Bethel shall prepare a baseline documentation report, including a baseline map, recording the condition of the Bingham Land and identifying the Land's condition and important natural resource attributes necessary to draft the Management Plan and Forest Management Plan. The Town shall hire a qualified person to prepare the baseline documentation report, which may be funded by a timber harvest subject to the following conditions:

- a. While cutting may occur before the adoption of the Management Plan and Forest Management Plan, no cutting shall be done in advance of preparation of the baseline documentation report. A limited cut may be done only to pay the costs of the completed report.
- b. The cutting shall be done pursuant to a written harvest prescription plan, certified by a state-licensed professional forester.
- c. The cutting shall be done in view of the data reflected in the baseline documentation report, and otherwise in accordance with the requirements and management practices that his Consent Order requires to be incorporated into the Management Plan and Forest Management Plan.

12. The Town shall hire a qualified person to prepare a Management Plan, which the Town shall adopt and implement as soon as reasonably possible but in any event no later than two years from the effective date of this Consent Order. The Management Plan shall be updated from time to time, but not less than every 20 years, to reflect the then-current best available science, and shall conform to the following requirements:

- a. The Management Plan shall soundly plan for the protection of water quality in Chapman Brook and its tributaries; the conservation of significant wildlife habitat, as defined by the Maine Natural Resources Protection Act, 38 M.R.S. §§ 480-A to 480-HH, as amended, and other locally significant wildlife habitat, including but not limited to deer wintering areas; and the preservation of the natural resource, recreational, and scenic qualities of the Bingham Land.
- b. Management of the Bingham Land shall support multiple uses, including the conservation of scenic and natural resources, low-impact outdoor recreation, wildlife habitat, sustainable yield timber harvesting, and other uses consistent with management of the watershed for protection of the water quality of Chapman Brook and its tributaries.
- c. The Management Plan may provide for public access on the Bingham Land, however, motorized public access shall be limited to snowmobiles. The Town shall not allow public access to the extent that it interferes with protecting the water quality of Chapman Brook and its tributaries.
- d. Management of the Bingham Land may provide for timber harvesting, however, any timber harvesting must be carried out in accordance with a

written Forest Management Plan, as set forth more specifically below, and which shall be made a part of the Management Plan.

- e. Income generated from any timber harvest shall be used: first to pay the property taxes on the Bingham Land; and second to manage the Bingham Land in accordance with the Management Plan.

13. The Forest Management Plan shall be drafted and certified by a state-licensed professional forester. A written harvest prescription plan, drafted to conform with the Forest Management Plan and certified by a state-licensed professional forester, shall be required for each harvest. Timber harvests shall not exceed sustained yield levels, and shall be secondary to and compatible with management of the Bingham Land as a natural area supporting and protecting water quality and quantity, while providing high quality wildlife habitat and low-impact public recreation. The Forest Management Plan shall define management practices that:

- a. Employ the highest standards for protection of water quality, and at a minimum, the Forest Management Plan shall include a one hundred foot no-cut buffer adjacent to Chapman Brook and all its perennial tributaries.
- b. Maintain a healthy and biologically diverse forest that supports a full range of native flora and fauna, employing diverse silvicultural methods and rotation periods, including management for late successional forest components.
- c. Protect sensitive resources, including scenic, riparian and high elevation areas.
- d. Enhance wildlife values, as set forth below.

14. The Forest Management Plan shall enhance the wildlife values of the Bingham Land through:
- a. The retention of late successional trees (also known as forest legacy trees) to a minimum standard of five square feet of retained legacy trees per acre for every forty acres where trees, which are appropriate for retention as legacy trees, are present in the existing stand.
  - b. The retention of mast cull trees (including oak and beech), large diameter snag trees (dead or dying trees suitable for cavity nesters, bat roosts, invertebrate refuge, and fungi, moss and lichen growth medium), and live den trees, where “live den trees” means live cull trees at least 18 inches in diameter with existing cavities.
  - c. The restoration and maintenance, adjacent to Chapman Brook, of a two hundred and thirty-foot riparian wildlife management area, extending beyond the one hundred foot no-cut buffer adjacent to Chapman Brook set forth above, consisting of a well-stocked softwood forest, where “well-stocked” means containing trees spaced widely enough to prevent competition yet closely enough to utilize the entire site, as recommended by the most current silvicultural guides issued by the United States Forest Service or its successor agency.
  - d. Adherence to current deer wintering area management guidelines, endorsed by the Maine Department of Inland Fisheries and Wildlife or its successor agency, where any deer wintering complexes are found to occur on the Bingham Land.

- e. Adherence to current state or federal management guidelines for any rare, endangered, or special concern species found to occur on the Bingham Land.
- f. The retention and protection of vernal pool wetlands and vernal pool wetland buffers, in accordance with current best management practices endorsed by the Maine Department of Inland Fisheries and Wildlife or its successor agency, and of any other features beneficial to wildlife as may be recommended by a wildlife biologist.

15. The Town shall each calendar year no later than December 31<sup>st</sup>, serve on the Office of the Attorney General, Consumer Protection Division, certification that the Town has, during the preceding year, maintained and managed the Bingham Land in accordance with the purposes and restrictions of the trust deed as modified by this Consent Order, including but not limited to, the Management Plan and the Forest Management Plan.

16. The Water District has leased a portion of the Bingham Land for ski area activities (ski-area lease) since approximately 1972, and has from time to time renewed the ski-area lease. The current ski-area lease, effective August 1, 2009 and expiring August 1, 2028, leases approximately 9.4 acres, as particularly set forth in the ski-area lease, which is attached to this Consent Order as Exhibit A. The Water District has not entered into any other lease with respect to the Bingham Land. The ski-area lease violates the purposes and restrictions of the Bingham Land trust deed.

- a. Other than renewing the ski-area lease under the existing terms, as set forth in Exhibit A to this Consent Order, except that the yearly rent schedule may be adjusted from time to time by reasonable agreement of the parties



thereto, the Town of Bethel shall not lease, give, grant, bargain, sell or convey with respect to any portion of the Bingham Land.

- b. The Town shall each calendar year no later than December 31<sup>st</sup> serve on the Office of the Attorney General, Consumer Protection Division, certification that, during the preceding year, other than the ski-area lease described above, none of the Bingham Land has been leased, given, granted, bargained, sold or conveyed .

17. Following the Town's June 2011 town meeting, the Town shall serve on the Court proof of the Town's ratification of this Consent Order. If the Town fails to ratify this Consent Order at the June 2011 town meeting, then the Bingham Land shall pass in fee simple to the State of Maine as set forth in the trust deed.

18. Within 10 business days of the Town's ratification of this Consent Order, the Town shall record this Consent Order in the Oxford County Registry of Deeds in a manner that causes it to be properly indexed with respect to the Bingham Land, and shall submit a copy of the recorded Consent Order with notation of the book and page number of the recording to the Office of the Attorney General.

19. Nothing in this Consent Order precludes the Attorney General from taking action to enforce her responsibilities under her statutory, 5 M.R.S. § 194, and common law authority on issues not specifically addressed herein.

20. Should the Town of Bethel become unwilling or unable to serve as the trustee of the Bingham Land in accordance with the with the purposes and restrictions of the trust deed as modified by the terms this Consent Order, then title to the Bingham Land shall pass in fee simple to the State of Maine as set forth in the trust deed.

21. Jurisdiction is retained by this Court for purposes of entering further orders as may be necessary or appropriate for the modification, enforcement, or execution of this Consent Order, including but not limited to an order vesting fee simple title in the Bingham Land in the State of Maine in accordance with the terms of the trust deed.

22. This Consent Order shall be effective upon entry.

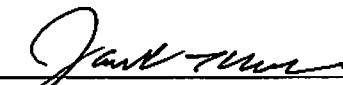
SO ORDERED.

Dated: \_\_\_\_\_

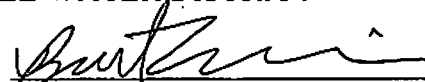
\_\_\_\_\_  
Justice, Superior Court

WE CONSENT:

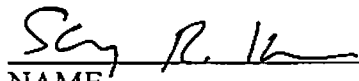
STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL

By:   
Janet T. Mills, Attorney General

BETHEL WATER DISTRICT

By:   
NAME  
Its CHAIR, duly authorized

TOWN OF BETHEL

By:   
NAME  
Its chair, duly authorized

**EXHIBIT A**

*Mills v. Bethel Water District*

COPY

**AMENDMENT TO LEASE AGREEMENT**

**THIS AMENDMENT** (the "Amendment"), made effective as of the 1st day of August, 2009, by and between the **BETHEL WATER DISTRICT**, a public utility organized under Chapter 48 of the Private and Special Laws of the State of Maine ("Lessor"), and **CNL INCOME SUNDAY RIVER, LLC**, a Delaware limited liability company, with a mailing address of 450 South Orange Avenue, 12<sup>th</sup> Floor, Orlando, FL 32801 ("Lessee").

**WITNESSETH:**

**WHEREAS**, Lessor, as lessor, and Sunday River Skiway Corporation, a Maine corporation ("SRSC"), as tenant, entered into that certain lease agreement dated October 26, 2004, and recorded at the Oxford County Registry of Deeds at Book 3615, Page 302 (the "Lease"); and

**WHEREAS**, SRSC assigned its rights under the Lease to Lessee via that certain Assignment and Assumption of Ground Leases dated August 7, 2007, and recorded at the Oxford County Registry of Deeds at Book 4175, Page 241; and

**WHEREAS**, Lessee, as landlord, entered into that certain Lease Agreement with SRSC, as tenant, dated August 7, 2007, a memorandum of which was recorded at the Oxford County Registry of Deeds at Book 4175, Page 307; and

**WHEREAS**, Lessor and Lessee now desire to modify the terms of the Lease as hereinafter set forth;

**NOW THEREFORE**, in consideration for the mutual promises herein contained, Lessor and Lessee agree as follows:

1. **Recitals/Use of Terms**: The recitals set forth above are true and correct and are incorporated herein by this reference. Unless otherwise set forth herein, all capitalized terms utilized herein shall have the same meanings as set forth in the Lease.
2. **Term**: The term of the Lease shall be extended by an additional nineteen (19) years, commencing as of noon on August 1, 2009 and expiring at noon on August 1, 2028, unless sooner terminated pursuant to any provision of the Lease.
3. **Rent**: For each year of the term commencing on August 1, 2009, Lessee shall pay Lessor rent in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00), with an annual 5% non-compounded increase, to be payable yearly in advance, with a final rent rate of NINE THOUSAND FIVE HUNDRED DOLLARS (\$9,500.00) for year nineteen (19). The yearly rent schedule is more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein.
4. **Modification of Leasehold Property**: The leasehold property as described in Section 1 of the Lease (the "Lease Property") and more particularly described in Exhibit "B" attached

hereto and by this reference incorporated herein, shall be reduced from the approximately 200 acres provided by the Lease to a parcel approximately 20 acres in area more particularly described in Exhibit "C" attached hereto and by this reference incorporated herein (the "Amendment Property").

**5. Default: Landlord's Rights of Termination:** Landlord may terminate this Lease if the Tenant shall neglect or fail to perform or observe any of its obligations herein previously set out, for a period of fifteen (15) days after notice in writing from the Landlord in respect to the nature of the default. Landlord may terminate this lease if the Tenant shall be adjudicated a bankrupt or insolvent according to law and no appeal shall be taken from such finding by the Tenant, or if such appeal shall be taken and prosecuted diligently or if the Tenant shall make an assignment of its property for the benefit of creditors, or if a receiver, trustee, or similar officer shall be appointed to take charge of all or any portion of the Tenant's property and it is not removed within sixty (60) days, or if the Tenant shall file a petition under any bankruptcy law, and the same shall not be dismissed within sixty (60) days, then and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit thereof or consent in a former instance). Landlord may lawfully, immediately after the expiration of any of the aforesaid notice periods or at any time after, and without further demand or notice, enter into and upon the said Premises or any party thereof in the name of the whole and repossess the same as of its former estate and expel the Tenant and those claiming by, through, or under it and remove its effects.

**6. Use Restriction:** Tenant's use of the Amendment Property for ski area activities shall not be deemed to include maintaining on the Amendment Property any building on the Amendment Property other than buildings used for the purpose of operating ski lifts. This restriction is intended to prohibit residential buildings, restaurants, bars and the like.

**7. Ratification:** Lessor and Lessee hereby ratify and confirm the continuing effect and validity of the Lease, as amended by this Amendment to Lease Agreement.

**8. Legal Fees:** Lessee shall pay all of Lessor's legal fees reasonably arising from and in conjunction with the execution of this Amendment.


**9. Effect of Amendment:** Except as amended and modified hereby, the Lease shall remain in full force and effect in accordance with its terms.

**10. Execution/Counterparts:** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as to any party whose signature appears hereon, and all of which shall constitute one in the same instrument. This Amendment shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of Lessor and Lessee. Each of the parties hereto have the right to rely on a fax signature from the other party, the same as having received an original counterpart.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date first written above.

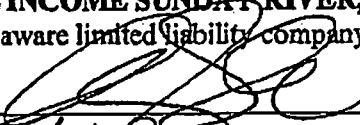
**LESSOR:**

**BETHEL WATER DISTRICT,**  
a public utility organized under Chapter 48 of the  
Private and Special Laws of the State of Maine

By:   
Name: BRENT ANGEVINE  
Title: CHAIR

**LESSEE:**

**CNL INCOME SUNDAY RIVER, LLC,**  
a Delaware limited liability company

By:   
Name: AMY SENELET  
Title: SVR

ACKNOWLEDGEMENT

STATE OF MAINE  
COUNTY OF OXFORD

The foregoing instrument was acknowledged before me this 24 day of November 2009, by Brent Angevine as Chair of the **BETHEL WATER DISTRICT**, a public utility organized under Chapter 48 of the Private and Special Laws of the State of Maine, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

Notary Public Signature Jeri B. Greenwell  
Jeri B. Greenwell  
(Name typed, printed or stamped)  
Notary Public, State of Maine  
Commission No.: \_\_\_\_\_

My Commission Expires: 9/21/2013

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 15 day of ~~November~~ <sup>December</sup> 2009, by Quyn Sinelli as Sr. Vice President of **CNL INCOME SUNDAY RIVER, LLC**, a Delaware limited liability company. He/She is personally known to me ~~or has produced~~ \_\_\_\_\_ as identification.

(NOTARY SEAL)

Notary Public Signature  
S. Quinones  
(Name typed, printed or stamped)  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_

My Commission Expires: July 6, 2012





**EXHIBIT "A"**

**YEARLY RENT SCHEDULE**

<b>Year</b>	<b>Rent</b>
1	\$5,000.00
2	\$5,250.00
3	\$5,500.00
4	\$5,750.00
5	\$6,000.00
6	\$6,250.00
7	\$6,500.00
8	\$6,750.00
9	\$7,000.00
10	\$7,250.00
11	\$7,500.00
12	\$7,750.00
13	\$8,000.00
14	\$8,250.00
15	\$8,500.00
16	\$8,750.00
17	\$9,000.00
18	\$9,250.00
19	\$9,500.00

**EXHIBIT "B"**

**DESCRIPTION OF THE LEASE PROPERTY**

**EXHIBIT B**

A strip of land three hundred (300) feet in width, near the top of Barker Mountain, so-called, in the town of Newry, County of Oxford, and State of Maine, said parcel to be three hundred (300) feet in width along the height of land which separates land of the Lessor and land of CNL Income Sunday River, LLC, a Delaware limited liability company, PEN-EM, Inc., a Maine corporation and Mega Mountain, Inc., a Maine corporation, being the same premises leased by the Bethel Water District to Sunday River Skiway Corporation herein by a Lease dated October 26<sup>th</sup>, 2004 and recorded in the Oxford County Registry of Deeds in Book 16603, page 302;

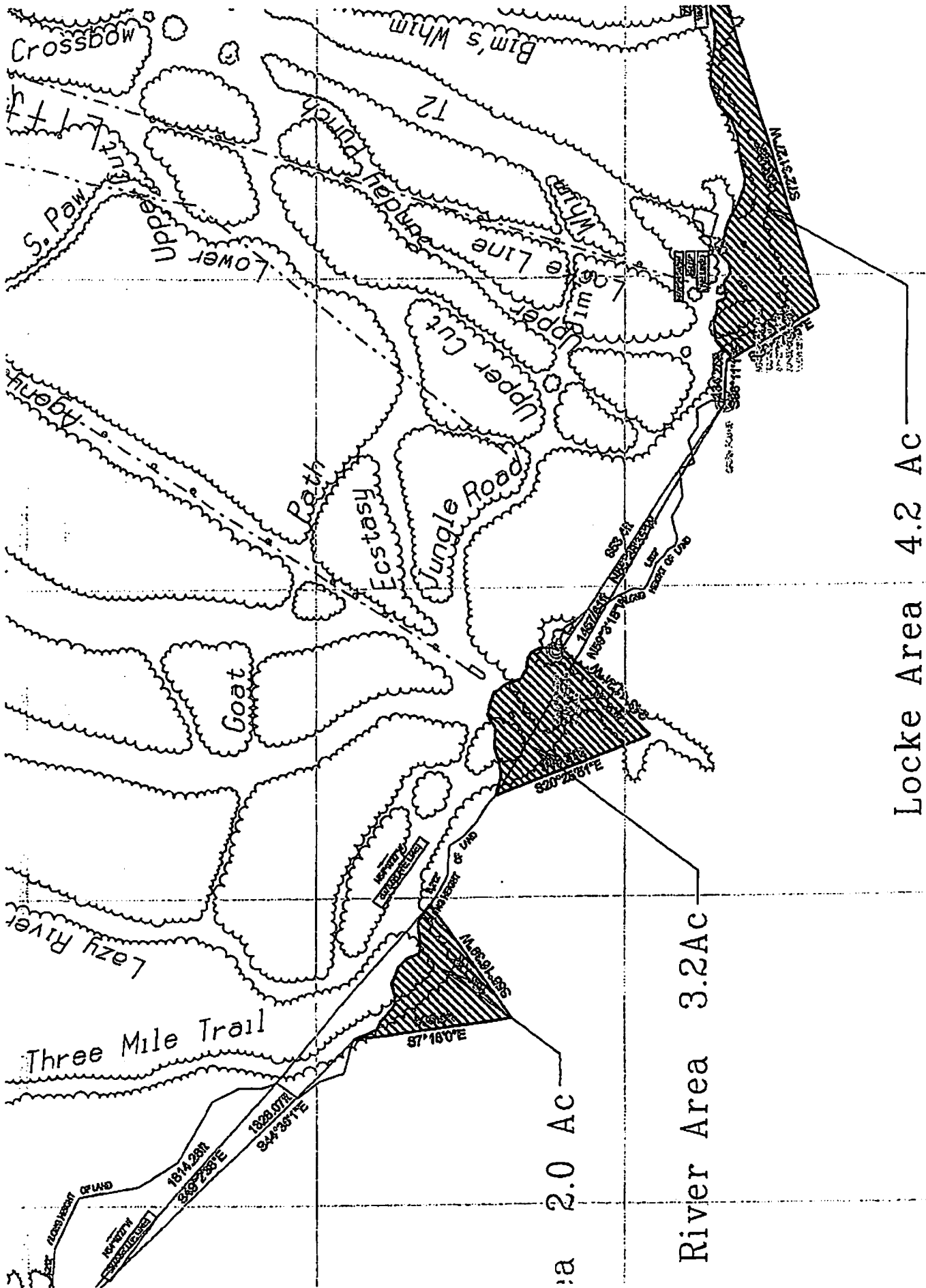
Also so much of the property owned by the Lessor, but now being used by the Lessee, located in said Newry for Lessee's ski area activities.

**EXHIBIT "C"**

DESCRIPTION OF THE AMENDMENT PROPERTY

[TO BE ADDED]





Crossbow

Bim's Whim

Lower N. Road  
Upper N. Road

Goat

Lazy River

Three Mile Trail

12

Jungle Road  
Eastside Path

a 2.0 AC

River Area 3.2AC

Locke Area 4.2 AC

1814.28ft  
839°28'57"E

1288.07ft  
94°38'11"E

57°18'0"E

S20°25'01"E

S52°41'

N58°0'18"

CON. HOME

WATERWAYS

PROPERTY CONVEYANCES

PROPERTY CONVEYANCES

LINE PROPERTY OF LAND

14,000-585

CON.

CON. HOME

CON. HOME

CON. HOME

CON. HOME

CON. HOME

CON. HOME

CON. HOME

CON. HOME